

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 99-4909

NATHANIEL L. SPIVEY,
Defendant-Appellant.

Appeal from the United States District Court
for the District of South Carolina, at Charleston.
David C. Norton, District Judge.
(CR-99-68)

Submitted: May 25, 2000

Decided: June 6, 2000

Before WILLIAMS, MICHAEL, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

J. Robert Haley, Assistant Federal Public Defender, Charleston, South
Carolina, for Appellant. Miller Williams Shealy, Jr., OFFICE OF
THE UNITED STATES ATTORNEY, Charleston, South Carolina,
for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Nathaniel Spivey appeals his conviction after a guilty plea to conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1), 846 (1994). Spivey's attorney has filed a brief in accordance with Anders v. California, 386 U.S. 738 (1967), raising one issue but stating that, in his view, there are no meritorious issues for appeal. Spivey was informed of his right to file a pro se supplemental brief but has failed to do so. Finding no reversible error, we affirm.

Counsel questions whether the district court fully complied with the mandates of Fed. R. Crim. P. 11. Following a de novo review of the record, we find that the district court fully complied with Rule 11 in accepting Spivey's guilty plea. See United States v. Goins, 51 F.3d 400, 402 (4th Cir. 1995) (stating standard of review). To the extent that the factual basis for the plea was not developed fully at the Rule 11 colloquy, we find that any error was harmless. See id.; Fed. R. Crim. P. 11(h). The facts presented in the presentence report, to which Spivey did not object, together with the facts proffered at the plea hearing, establish that Spivey participated in a conspiracy to distribute cocaine. See United States v. Burgos, 94 F.3d 849, 857 (4th Cir. 1996) (en banc) (discussing elements of offense); United States v. Adams, 961 F.2d 505, 512-13 (5th Cir. 1992) (considering evidence contained in defendant's presentence report in determining whether Rule 11(f) error was harmless); United States v. DeFusco, 949 F.2d 114, 120 (4th Cir. 1991) (stating that court may find factual basis from anything appearing on the record and has wide discretion in determining existence of factual basis).

In accordance with Anders, we have reviewed the entire record in this case and have found no meritorious issues for appeal. We therefore affirm Spivey's conviction and sentence. This court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave

to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED